This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0966
A22-0979

State of Minnesota,
Respondent,

vs.

Brenda Marie Tucker,
Appellant (A22-0966),

and

Brenda Marie Tucker, petitioner,
Appellant (A22-0979),

vs.

State of Minnesota,
Respondent.

Filed June 20, 2023
Affirmed
Smith, Tracy M., Judge

Redwood County District Court
File No. 64-CR-20-143

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, William C. Lundy, Special Assistant County Attorneys, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals, appellant Brenda Marie Tucker appeals from final judgments of conviction, following a bench trial, for felony domestic assault and felony malicious punishment of a child and from an order denying postconviction relief. Tucker argues that the district court committed reversible error at trial by admitting expert testimony regarding the counterintuitive behaviors of child victims of abuse and admitting evidence of her prior bad acts. She also argues that the district court abused its discretion by denying her petition for postconviction relief without an evidentiary hearing. We affirm.

FACTS

Respondent State of Minnesota charged Tucker by amended complaint with felony domestic assault in violation of Minnesota Statutes section 609.2242, subdivision 4 (2018), and felony malicious punishment of a child in violation of Minnesota Statutes section 609.377, subdivision 1 (2018). The complaint alleged that Tucker struck her daughter, M.L., in the face during Tucker's scheduled visitation with the child on the weekend of February 8, 2020. Police investigation of the incident was initiated when M.L.'s father, T.L., contacted the police after picking M.L. up at the end of the weekend and seeing a bruise on the child's face.

Tucker waived her right to a jury trial. At a bench trial in February 2022, the state offered testimony from M.L., T.L., and the investigating police officer. M.L. testified that she was about seven years old at the time of the incident. She said that she was with her

mother and her siblings (with a different father), at a hotel for the weekend, spending time together and swimming at the hotel pool. M.L. testified that at one point when she was in the hotel room with her mother and baby sister, Tucker became angry and slapped her "right by" her eye with an open hand. M.L. testified that it hurt for several days and left a mark. M.L. said it was "kinda the worst day of [her] life." T.L. testified that he had dropped M.L. off with Tucker and that, when he picked M.L. up at the end of the weekend, he noticed an injury near her eye. He explained that initially M.L. told him that her brother had bumped her. But, later that night, M.L. told him that Tucker had hit her. The investigating police officer testified that he interviewed M.L. and that she told him that Tucker slapped her on her face.

Over Tucker's objection, the district court admitted expert testimony offered by the state to explain the counterintuitive behaviors of child victims of domestic abuse. The district court also admitted, over Tucker's objection, testimony from witnesses about four prior incidents of physical violence by Tucker against her domestic partners.

For the defense, Tucker's brothers and sister and her sons—who were all present at the hotel with Tucker and M.L.—testified that M.L. had slipped at the pool and struck the side of her face. Tucker also testified and denied that she struck M.L.

On February 24, 2022, the district court filed an order finding Tucker guilty of both counts. On April 8, Tucker filed a petition for postconviction relief based on newly discovered evidence. A sentencing hearing was held on April 11, and the district court sentenced Tucker to 32 months in prison on the first count—felony domestic assault. In June, the district court denied postconviction relief without an evidentiary hearing.

These consolidated appeals follow.

DECISION

I. Expert Testimony

Over objections from the defense, the district court admitted the expert testimony of Laura Gapske about the counterintuitive behaviors of children who are victims of domestic abuse. Tucker argues that her convictions must be reversed, and a new trial granted, because the district court abused its discretion by admitting that expert testimony.

The admission of expert testimony is governed by Minnesota Rule of Evidence 702, which states, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." "Under this rule, expert testimony is admissible if: (1) the witness is qualified as an expert; (2) the expert's opinion has foundational reliability; (3) the expert testimony is helpful to the jury; and (4) if the testimony involves a novel scientific theory, it [satisfies] the *Frye-Mack* standard." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Even if admissible under rule 702, expert testimony should be excluded under Minnesota Rule of Evidence 403 if its probative value is substantially outweighed by the danger of unfair prejudice. *State v. Grecinger*, 569 N.W.2d 189, 193 (Minn. 1997). An appellate court reviews the admission of expert testimony for an abuse of discretion. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). If the evidence was wrongly admitted, an appellate court will not reverse the verdict if the admission was harmless. *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016).

Tucker argues that the district court abused its discretion by admitting the expert testimony because (1) Gapske's testimony was unhelpful and (2) the probative value of the

testimony was substantially outweighed by the danger of unfair prejudice. We address each argument in turn.

Helpfulness

The basic requirement for admitting expert testimony is that the testimony will be helpful. *State v. Helterbridle*, 301 N.W.2d 545, 547 (Minn. 1980). "Expert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions." *Obeta*, 796 N.W.2d at 289.

Tucker argues that Gapske's testimony was unhelpful because M.L. did not display the common characteristics of abused children that Gapske discussed. Specifically, Tucker states that M.L. made her allegations within a few hours of the incident, she never recanted her account, and she refrained from initially reporting the incident because she did not want her father to get angry, and that none of that behavior corresponded to Gapske's testimony about counterintuitive victim behavior. But the district court specifically found Gapske's testimony about the "barriers to disclosure and the process of disclosure" to be relevant and helpful in understanding M.L.'s reporting. The district court stated that, "[g]iven [M.L.'s] relationship to [Tucker] and separate relationship with [T.L.] and given her fear of the consequences of a confrontation, this process of denial and delayed disclosure is placed into context." Thus, the district court did find Gapske's testimony helpful in understanding the behaviors displayed by M.L.

Probative Value Versus Unfair Prejudice

Tucker asserts that the expert testimony was also inadmissible because it had minimal probative value that was substantially outweighed by the danger of unfair prejudice. *See Grecinger*, 569 N.W.2d at 193. This argument is unconvincing.

First, the probative value of Gapske's testimony was not minimal. As the district court stated, Gapske's testimony explained the barriers to disclosure and the process of disclosure, placing M.L.'s actions in context. *See, e.g.*, *State v. Myers*, 359 N.W.2d 604, 609-10 (Minn. 1984) (observing that the behaviors of child victims of sexual abuse may be outside the common experience of a jury and concluding that expert testimony concerning the traits and characteristics typically found in sexually abused children was therefore properly admitted). The district court reasoned that Gapske's testimony provided helpful context in understanding M.L.'s counterintuitive behaviors in first denying and only later reporting that her mother hit her.

Second, the risk of unfair prejudice was low. In asserting prejudice, Tucker cites the expert's testimony that, when children disclose information about their senses, their account is less likely to have been coached; that peripheral details dissipate over time with children; and that the core elements of a child's statements, when consistent, can be relied on as deriving from actual experience and memory. Tucker asserts that this testimony was "akin to vouching" and presented the danger that the factfinder would use the testimony to "unfairly bolster M.L.'s credibility."

Generally, expert testimony that a witness is credible is impermissible. *Id.* at 609-10; *see also State v. Morales-Mulato*, 744 N.W.2d 679, 690 (Minn. App. 2008) (concluding that the expert's testimony was not admissible because, "[a]lthough the prosecutor here

carefully avoided directly asking [expert] about complainant's credibility or truthfulness, it is apparent in this case . . . that the interviewer was, in fact, stating her opinion that complainant was credible"), *rev. denied* (Minn. Apr. 29, 2008). But that was not the expert testimony here. Gapske did not offer any opinion on M.L.'s credibility. In fact, Gapske did not discuss M.L. or any specific facts in this case at all. Furthermore, any risk of prejudice was further reduced because this case proceeded as a bench trial, rather than before a jury. *See State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (noting that, although district court judges are not "immune from emotional appeals or the temptation to misuse evidence," they have "experience and familiarity with the operation of the rules of evidence" that reduce the risk of unfair prejudice).

In sum, the district court did not abuse its discretion by admitting Gapske's testimony because the testimony was helpful to the fact-finder and its probative value was not substantially outweighed by the danger of unfair prejudice. Because we discern no error in the admission of the expert testimony, we need not consider whether any error was harmless.

II. Relationship and *Spreigl* Evidence

Tucker challenges the district court's admission of evidence of four prior bad acts committed by Tucker. The district court admitted evidence of four incidents of physical violence by Tucker against former domestic partners as relationship evidence under Minnesota Statutes section 634.20 (2022) and as *Spreigl* evidence under Minnesota Rule of Evidence 404(b) for the purpose of establishing common scheme or plan. *See State v. Ness*, 707 N.W.2d 676, 688 (Minn. 2006); *State v. Spreigl*, 139 N.W.2d 167, 170-71 (Minn. 1965).

An appellate court reviews a district court's decision to admit relationship evidence or *Spreigl* evidence for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004); *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). But improperly admitted evidence generally will not warrant reversal if its admission was harmless. *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). Under the harmless-error standard, a defendant who alleges an error not implicating a constitutional right must demonstrate that there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* (quotations omitted).

Here, we need not analyze whether the district court abused its discretion in admitting the evidence as relationship or *Spreigl* evidence because any error was harmless. In its order, the district court stated that it determined that the evidence was not "helpful" for its "stated (and limited) purpose." It said that the case "ultimately comes down to issues of credibility" and that the evidence did not illuminate these issues. The district court stated that therefore the evidence "will not be considered." Tucker offers no evidence or argument that, despite the district court's explicit statement that it was disregarding the evidence, it nevertheless considered it in making its decision. Because the district court did not consider or rely on the evidence of Tucker's prior bad acts, there is not a "reasonable possibility that [the evidence] substantially affected" the district court's decision. *Id.*

III. Denial of Postconviction Relief

Tucker argues that the district court erred by denying her petition for postconviction relief without an evidentiary hearing.

We review the denial of a postconviction petition without an evidentiary hearing for an abuse of discretion. *See State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). A

postconviction petitioner is entitled to an evidentiary hearing on the petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2022); *accord Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). "In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017).

In her petition, Tucker asserted that she was entitled to a new trial based on newly discovered evidence. To obtain a new trial based upon newly discovered evidence, the defendant must establish:

> (1) that the evidence was not known to [the defendant or defense counsel] at the time of trial, (2) that [their] failure to learn of it before trial was not due to a lack of diligence, (3) that the evidence is material (or as [the supreme court has] sometimes said, is not impeaching, cumulative or doubtful), and (4) that the evidence will probably produce either an acquittal at a retrial or a result more favorable to the petitioner.

Race v. State, 417 N.W.2d 264, 266 (Minn. 1987).

With her petition, Tucker submitted an affidavit from an investigator who stated that, in March 2022, about one month after the trial in this case, she spoke to A.S., a woman who had not testified at the trial. According to the investigator, A.S. said that T.L. and M.L. were living with her at the time of the incident and that she was with them when they came home from the hotel. She said that T.L. had a "vendetta" against Tucker and that this was an opportunity to get Tucker "sent to prison." A.S. also "said that she did not see anything on Mary's face" although "she was looking for it."

The district court denied Tucker's petition without an evidentiary hearing. In its order, the district court recognized that an evidentiary hearing was warranted if the petitioner alleged facts that, if proved, would entitle her to relief. It correctly recognized that an evidentiary hearing is required if there is a material issue of fact.

The district court then considered A.S.'s statement regarding T.L.'s desire to get Tucker sent to prison. It explained that this evidence posited a motive for T.L. to fabricate his testimony and thus would tend to impeach T.L.'s testimony. The district court concluded that, because the evidence was merely impeaching, it would not satisfy the third prong for newly discovered evidence. *See id.* The district court next considered A.S.'s statement that she did not see anything on M.L.'s face. It concluded that this evidence would not "probably produce an acquittal or more favorable result," as required by the fourth prong. *See id.* The district court explained that it found M.L.'s testimony "particularly credible" and that M.L.'s testimony was corroborated by the investigating officer's and T.L.'s observations and by photographs of the injuries to M.L.'s face. It concluded, "Considering this consistency and corroboration, it is improbable that [A.S.'s] testimony that she 'did not see anything' would produce an acquittal or more favorable result for [Tucker]."

Tucker argues that the district court made improper credibility determinations and failed to view the evidence in the light most favorable to Tucker. We disagree. As for A.S.'s statements about T.L., the district court correctly concluded that that evidence would be useful only to impeach T.L.'s testimony regarding the events when he brought M.L. home and thus would not satisfy the third prong of the newly-discovered-evidence test.

As for A.S.'s statement that she did not see anything on M.L.'s face, the district court did not make credibility determinations. Rather, it explained why, in light of the other evidence in the case, the testimony—even if believed—would not "produce an acquittal or a more favorable result" and thus fails the fourth prong. Tucker analogizes the district court's analysis to *Andersen*, in which the supreme court concluded that the postconviction court made improper credibility determinations based on its declarations that the affidavits submitted were "inherently unreliable" and "dubious." 913 N.W.2d at 422-23. But, unlike in *Andersen*, the district court here made no such declarations or determinations about A.S.'s reliability or the veracity of the affidavit. Rather, it appropriately determined that this fact alleged in the petition, even if proved, would not entitle Tucker to relief.

In sum, because the newly discovered evidence, even if taken as true, would not satisfy the test for granting a new trial, the district court did not err by denying Tucker's petition for postconviction relief without an evidentiary hearing.[1]

Affirmed.

[1] Tucker also briefly argues that the evidence, even if not likely to result in an acquittal of both charges, could yield in a "result more favorable" to Tucker in the form of a downward sentencing departure. *See Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). It is not clear that this argument was made to the district court, but, in any event, it is unconvincing and insufficient to demonstrate an abuse of discretion by the district court in denying postconviction relief.